IN THE COUNTY COURT OF VICTORIA

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AT MELBOURNE
CRIMINAL DIVISION

Case No. CR-17-00254
Indictment No. G13259988

THE DIRECTOR OF PUBLIC PROSECUTIONS

v

JOSEPH MICHAEL DE VENUTO

JUDGE:	HIS HONOUR JUDGE TRAPNELL
WHERE HELD:	Melbourne
DATE OF HEARING:	7 September 2017
DATE OF SENTENCE:	15 March 2018
CASE MAY BE CITED AS:	R v De Venuto
MEDIUM NEUTRAL CITATION:	[2025] VCC 293

REASONS FOR SENTENCE

Subject:	CRIMINAL LAW – SENTENCE
Catchwords:	False accounting – 1 charge, obtain property by deception – 4 charges, obtain financial advantage by deception – 3 charges.
Legislation Cited:	*Crimes Act 1958*
Sentence:	

APPEARANCES:	Counsel	Solicitors
For the Prosecution	Mr M Roper (7 September 2017) Mr S Kenna (15 March 2018)	Mr J Cain, Solicitor for Public Prosecutions
For the Accused	Mr H A Ratray (7 September 2017)	Slades & Parsons

1 Joseph De Venuto, you have pleaded guilty to an indictment containing eight charges – one charge of false accounting,[1] four charges of obtaining property by deception[2] and three charges of obtaining financial advantage by deception.[3]

2 The maximum penalty for false accounting is 10 years' imprisonment.[4] The maximum penalty for obtaining property by deception is 10 years' imprisonment[5] and the maximum penalty for obtaining financial advantage by deception is 10 years' imprisonment.[6]

3 The Director of Public Prosecution filed a 'Crown Opening on Plea' dated 7 September 2017,[7] which I am told by your counsel I can treat as a statement of agreed facts.

4 The facts

5 Between 17 July 2006 and 15 October 2015, you were employed as the Financial Controller by Matthews Bronze Pty Ltd, a company trading as "Arrow Bronze" at 22–24 Elliott Street in Dandenong ("the company'). The company employed about 50 people, had a turnover of about 14 to 15 million dollars per year and a profit of about $4,000,000 per year.

6 Your role was to manage the accounts and all financial transactions of the business including the payroll. You were authorized to use a company car and telephone, but you were not entitled to claim private vehicle, private telephone expenses or credit card expenses.

7 During your employment you dishonestly transferred company funds into your personal bank accounts and the bank accounts of your step-son, James Halstead, and your friend, Lee Wegner, to which you had been given access. To

1 Contrary to s 83 *Crimes Act 1958*
2 Contrary to s 81 *Crimes Act 1958*
3 Contrary to s 82 *Crimes Act 1958*
4 Pursuant to s 83(1) *Crimes Act 1958*
5 Pursuant to s 81(1) *Crimes Act 1958*
6 Pursuant to s 82(1) *Crimes Act 1958*
7 Exhibit 'P1'

these two latter accounts you were given the password or PIN, and used the accounts exclusively for your own purposes. You also paid company funds directly to your own creditors without authorization. You were able to do so because of your role as Chief Financial Controller with access to the company's cheque books and computerised banking system.

8 You are the father of four children with your former partner, Amy Wylde, from whom you separated in 2006, however you maintain an amicable relationship. You were required to make payments in respect of your children to the Child Support Agency.

9 Your salary with the company was approximately $100,000 per annum. In order to reduce your Child Support Agency payments, you devised a scheme to halve your assessable income. Between November 2008 and October 2013, you paid by company cheque or electronic transfer half of your annual salary into bank accounts you had established and/or controlled. You recorded these payments in the company's books of account as salary sacrificed superannuation payments to Hesta Super Fund. You were not a member of this superannuation fund. In so doing, you were able to receive actual payment of your full salary and avoid tax, as well as reduce your obligations under child support legislation. The individual payments, totalling $379,038.11, are set out in Schedule A to the indictment and cover the period 19 November 2008 to 10 October 2013; a period of nearly five years. This salary sacrifice scheme constitutes the false accounting charge (charge 1).

10 Between 14 August 2009 and 5 October 2015, you drew cheques from your employer's account and used them to pay your home phone account. You were not entitled to do this under your salary package arrangements. The payments would appear as payments for the expenses incurred by the company. The individual payments, totalling $26,536.50, are detailed in Schedule B to the indictment. This constitutes the first charge of obtaining property by deception (charge 2).

11 On 3 May 2010, purporting to act on behalf of the company, you purchased a motor vehicle from Astoria Honda using a company cheque for $40,968. In fact the vehicle was purchased for your ex-partner, Ms Wylde. She paid $30,403 towards this vehicle and those funds and some others from the trade in were credited to the company. The vehicle was never recorded in the company's assets register. In October 2015 you transferred the vehicle to Ms Wylde from the company's name. The net loss for the company was $7,565. This constitutes the second charge of obtaining property by deception (charge 3).

12 Charge 4 is a rolled-up charge comprising your making unauthorized electronic transfers of company funds to bank accounts controlled by you, by falsely describing each payment as being to an existing creditor or supplier, but replacing the payee's bank account number with either your own or Halstead's or Wegener's bank account numbers. Between 11 June 2010 and 14 August 2015, you made 36 such transfers totalling $730,397. The individual payments and the accounts into which the monies were deposited, are detailed in Schedule C to the indictment. This constitutes the first charge of obtaining a financial advantage by deception (charge 4).

13 Charge 5 is also a rolled-up charge comprising your drawing unauthorized company cheques to pay yourself, your Amex credit card and the Knox Football Club and recording them to be legitimate payments connected with the company. Between 3 March 2011 and 9 April 2015, you drew cheques totalling $10,340.76 as set out in Schedule D to the indictment. This constitutes the third charge of obtaining property by deception (charge 5).

14 Charge 6 is another rolled-up charge comprising your making unauthorized electronic transfers of company funds to pay your Amex credit card, personal motor vehicle registration and RACV membership, by falsely describing each payment as legitimate company expenses. Between 27 April 2011 and 20 May 2015 you made transfers totalling $21,036.55. These payments are detailed in

Schedule E to the indictment. This constitutes the second charge of obtaining financial advantage by deception (charge 6).

15 On 1 November 2013, you promised to buy a Ford Mondeo motor vehicle from the company, which was being phased out, for $8,000. As financial controller, you were responsible for reimbursing the company with the proceeds from the sale of this vehicle. However it was later discovered that you used the proceeds from a receipt of company scrap metal as a substitute for the expected trade-in amount of $8,000 to account for the disposal of this vehicle within the company's general ledger. No other evidence of any genuine reimbursement by you was found. A review of the journal entries made to the relevant ledger accounts confirmed that a legitimate transaction for scrap metal sales had been misrepresented as payment for the vehicle. This constitutes the fourth charge of obtaining property by deception (charge 7).

16 You were able to access a spare CityLink toll reader device belonging to the company and used it without authorization in your private vehicle, resulting in CityLink tolls totalling $188.01 being billed to the company. This constitutes the third charge of obtaining financial advantage by deception (charge 8).

17 On 12 October 2015, Pitcher Partners, the company's auditors, alerted the company's managing director, Lynwood Davis, to an unusual payment of $22,493.80 into your account, which was purportedly paid to one of the company's creditors, McDiarmid Graphics. The following day, Davis sought a meeting with you and you admitted taking the money. Your employment with the company was terminated on 14 October 2015.

18 Pitcher Partners then conducted an extensive audit of the company's accounts, which eventually revealed the extent and forms of your offending conduct relating to the charges on the indictment. Mr Davis later attended the Dandenong Police Station where he reported the matter to police.

19 Police obtained search warrants to seize financial records held by you, James Halstead, Lee Wegner and Amy Wylde. An analysis of the records was then conducted.

20 On 1 September 2016, police executed search warrants at your home in Wantirna South and that of Amy Wylde and James Halstead also in Wantirna South. You and Ms Wylde were arrested and conveyed to the Dandenong Police Station for interview.

21 Ms Wylde, Mr Wegner and Mr Halstead were not charged by police in relation to this matter. They provided a statements implicating you in these charges.

22 During your recorded interview you were cooperative with police and made full admissions.

23 Victim Impact Statement

24 Mr Davis prepared a victim impact statement which was tendered at the plea hearing.[8] Mr Davis expressed his emotional feelings of hurt, anger and embarrassment that such a senior and trusted member of his staff would engage in such fraudulent activity. His concerns included that it would affect his reputation and he feared that other staff may also have been involved. Mr Davis noted that this caused him to tighten monitoring of employee performance through observation and questioning. As a result, the physical impact of this crime has increased his workload, both at the office and at home. It has caused him a heightened sense of concern and worry, sleeplessness, excessive tiredness, and dampened his enthusiasm in meeting the demands of running the company's business.

25 Offence seriousness

26 These are very serious offences committed by a person in a position of great trust. You were in a senior management position with the company you

8 Exhibit 'P2'

defrauded, indeed you were the company's Financial Controller throughout the charged period. You were appointed to this position in July 2006, one year before you commenced the offending comprised by charge 1 and some three years before you commenced defrauding the company.

27 The total amount defrauded, leaving aside the false accounting charge, is $837,466.82, which is a significant sum of money for an enterprise of this company's size to lose. The fact the company was insured against such losses does not mitigate your crimes, the loss falling on the whole community, rather than entirely on your victim.[9] However, it does reduce the impact of your crime on the company, your victim.

28 The false accounting charge involved the misrecording by you, or at your direction, of some 60 odd transactions in the company's books of account totalling a further $379,038.

29 The offences were committed over an extended period of time, some 6½ years, and comprised over 180 false transactions or entries. Clearly this was a highly planned and well executed fraud committed by you on your employer, which went undetected by the company's auditors for many years. The seniority of your position with the company made detection of your crimes more difficult than would have been the case with a less senior person, where one would expect there to be more checks and balances and closer scrutiny.

30 Moreover, charges 4, 5 and 6 are rolled-up charges.[10]

31 While I accept that you were not living the life style of 'the rich and famous,' as your counsel put it, your motive for committing these crimes was greed and the proceeds of your offending were used to support your lifestyle. About $160,000

[9]See *R v Cave* (1988) 32 A Crim R 484, 487 (O'Bryan J, McGarvie and Tadgell JJ agreeing); *Curtis (No 3)* (2016) 114 ACSR 184, 189 [24] (McCallum J)
[10]See *R v Jones* [2004] VSCA 68 [12]–[13] (Charles JA, Phillips JA and Bongiorno AJA agreeing); *R v Beary* (2004) 11 VR 151, 156–7 [11]–[14] (Callaway JA)

to $200,000 of your ill-gotten gains was expended on private school fees for your children and on other living expenses.

32 Your moral culpability is very high.

33 General deterrence, denunciation of your conduct and just punishment are the primary sentencing principles applicable in your case.[11] Specific deterrence and protection of the community have little or no relevance in your case, because, among other factors, by reason of these present convictions you are very unlikely ever to be in a position to reoffend.[12] I access your prospects of rehabilitation as being very good.

34 Courts have frequently noted that for white collar offending, offenders are likely to have good character references, limited criminal history and good prospects of rehabilitation. However, these mitigating factors must be given less weight than the factor of general deterrence.[13]

35 Prior Convictions

36 You have one prior finding of guilt for breaching an intervention order in 1996 for which you received an adjourned bond without conviction. This prior matter is irrelevant for present purposes and I treat you as a person of prior good character.

[11]See *DPP v Bulfin* [1998] 4 VR 114, 131–132 (Charles JA, Winneke P and Callaway JA agreeing); *R v Pantano* (1990) 49 A Crim R 328, 330 Wood J (Carruthers and Smart JJ agreeing); Dyason v The Queen (2015) 251 A Crim R 366 (Whelan, Santamaria and Beach JJA)
[12]Ibid
[13]See *DPP v Bulfin* [1998] 4 VR 114, 131–132 (Charles JA, Winneke P and Callaway JA agreeing); *R v Rivkin* (2004) 184 FLR 365, 443 [410] (Mason P, Wood CJ at CL, Sully J); *DPP (Cth) v Page* [2006] VSCA 224 [37] (Eames JA, Vincent JA and Redlich JJA agreeing); *Dyason v The Queen* (2015) 251 A Crim R 366, 372 [31], 373–4 [38]–[45] (Whelan, Santamaria and Beach JJA).

37 Personal circumstances

38 You are now aged 47 years.[14] Your counsel tendered on your behalf an 'Outline of Submissions on Plea in Mitigation' dated 12 September 2017[15] and relied on the psychological report prepared by Mr Patrick Newton dated 20 August 2017.[16] In his report Mr Newton outlined your personal history, which was supplemented by your counsel.

39 You are the youngest of three children born to Italian immigrant parents. Your parents migrated here not long before you were born. Although your relationship with your parents had been positive and free from serious conflict, your parents had worked very long hours to support the family and instilled these values in you. Your father died from cancer in 2006. Your mother is in her mid-seventies and has been diagnosed with cancer.

40 Your parents primarily spoke Italian; however, your first language is English which you learnt before attending school. You described yourself as an average student. Although your final grades were 'not so good', you completed Year 12 and then studied accountancy at Holmesglen TAFE. Following the completion of an Associate Diploma in Accounting, you completed a Bachelor of Business degree whilst working, graduating in 1995.

41 Your work history has been entirely in the finance field and you were employed by the company as financial controller and Chief Financial Officer from July 2006 until this offending was detected in October 2015. Since then you purchased a small business in Sale, but this was unsuccessful. You are presently unemployed.

42 You have been involved in two major relationships as an adult. Between 1989 and 1992 with Ms Karen Halford, with whom you have a son Mathew, born in 1991, although following a difficult family law dispute you have not seen this child

[14]Date of birth is 14 October 1970.
[15]Exhibit 'A1'
[16]Exhibit 'A2'

for some years. The second relationship was between 1993 and 2005 with Ms Amy Wilde. You have four children aged between 18 and 22 and you also cared for Ms Wilde's son from a previous relationship, who is now aged 28. You are now separated from Ms Wilde, but you have maintained an amicable relationship since separating, continuing to have contact with and providing support to each of your children.

43 In the past you have contributed to the community by coaching children at a suburban football club and the same suburb's cricket club.

44 Mr Newton noted your view that 'neither substance misuse nor any other behavioural issue' was involved in the circumstances that have brought you before the Court.[17] You told Mr Newton that you had not used the money you had obtained for any personal enrichment or luxury items, rather the bulk of it had been spent on expenses associated with your children, such as school fees, or on general living expenses. Moreover, you expressed sorrow for your conduct, and told him that the dishonesty inherent in your conduct runs counter to your values, and that you particularly regretted having offended against your employer, whom you had looked up to as a personal mentor and role model.[18]

45 Mr Newton opined that you are experiencing some reactive anxiety in response to your ongoing legal problems, however your symptoms are not sufficiently severe to meet the diagnostic criteria for any mental disorder. Specifically you would not meet the criteria for any anxiety-related disorder, mood disorder or adjustment disorder at this time. You were reportedly experiencing chronic stress at the time of your offending, but there is no indication to suggest that you were labouring under the effects of a mental disorder. According to Mr Newton you are of average intelligence with good verbal and non-verbal reasoning skills. He opined that you have the potential to benefit from further educational and therapeutic endeavours as you may choose to undertake.[19]

[17]Exhibit A2 p 4
[18]Exhibit A2 p 4
[19]Exhibit A2 p 5–6

46 Finally Mr Newton concluded that you have accepted responsibility for your actions, expressed your remorse openly and with the ongoing support of a small group of committed friends, your prospects for making a lasting and positive recovery are good.[20]

47 Mitigating circumstances

48 The following matters were relied on by your counsel in mitigation:

49 42.1 You entered pleas of guilty at the earliest opportunity.

50 42.1.1 You first indicated 'in principle agreement' to plead guilty to 'appropriate' charges at a further committal mention hearing held about three months after you were charged. It was accepted by the Director that your pleas of guilty were entered at an early stage. I accept this was at the earliest reasonable opportunity.

51 42.1.2 This is a significant mitigating factor in your case. Your pleas have objective utilitarian benefit as well as a subjective quality, in the sense that they indicate your willingness to facilitate the course of justice and an acceptance of responsibility for your offending conduct. Accordingly, you will receive a significant discount from the sentences that I would otherwise have imposed in respect of these offences.

52 42.1.3 However, I am unable to find, in your case, that the pleas of guilty are indicative of true contrition and remorse. While Mr Newton expressed the view that you have 'expressed [your] remorse openly' and that you 'expressed sorrow for [your] conduct' and that you 'regret' having offended against your employer, 'whom you respected and looked up to',[21] you did not

[20]Exhibit A2 p 6
[21] Exhibit 'A2' [21]

assist investigators to identify the extent of your frauds. You admitted to your employer only the offending which was initially discovered by the company's auditors; amounting to $22,493.80.

53 42.1.4 I accept that you were not asked to assist the company's auditor to identify the full extent of your fraudulent conduct, but that did not prevent you from admitting the full extent of your frauds at the earliest opportunity and saving your employer further expense. As it was, immediately following your initial confession, Pitcher Partners conducted an extensive audit of the company accounts which eventually revealed the full extent of your offending conduct.

54 42.1.5 As the Court of Appeal observed in *Barbaro v The Queen*:[22]

> 55 The sentencing process must be informed by intellectual rigour. That, of course, applies when considering the weight to be given to remorse as an important sentencing consideration.

56 Applying the principles and approach elaborated in that case,[23] I can only find that there is limited remorse present in this case. I will take that into account in your favour.

57 42.2 It was submitted on your behalf that during your recorded interview you 'provided full admissions and were extremely co-operative with police'. The Director accepted this was so. You were interviewed by police some 11 months after your initial confession. During the interview you were presented with the fruits of the extensive forensic audit of the company's account. You were then fully co-operative and made full admissions, when confronted with the evidence against you. I take your

[22](2012) 226 A Crim R 354, 364 [33] (Maxwell P, Harper JA and T Forrest AJA) (citations omitted)
[23]Ibid 364–365 [32]–[38]

co-operation and admissions into account in your favour.

58 42.3 I accept you fall to be sentenced as a person of otherwise good character, with no relevant prior criminal history, and I take that factor into account in your favour, with the qualifications I have previously referred to.

59 42.4 I accept you have a low risk of reoffending and you have good prospects of rehabilitation.

60 42.5 I also accept you will suffer a degree of custodial hardship by reason of being separated from your children and the sale of your matrimonial home, which arises from your committing these offences.

61 42.6 I also accept that you are entitled to a sentencing discount on account of delay.[24] While Mr Brand, who appeared on your behalf before me this morning, only relied on the effect of delay from the plea hearing in September 2017 until today, I accept that this matter has been hanging over your head for a longer period than that; at least since you were charged in September 2016. I also accept some element of custodial hardship on account of the delay between the plea hearing and today. I take those matters into account

62 Clearly, in a case of this nature the totality principle must be given careful consideration because of the overlapping nature of the offences and also to avoid the imposition of a crushing sentence.

63 I consider that it is appropriate to impose an aggregate sentence of imprisonment on charges 2 to 8 (inclusive) by reason of those offences being founded on the same facts and/or forming a series of offences of the same or a similar

[24]See *R v Cockerell* (2001) 126 A Crim R 444, 447 [10] (Chernov JA, Winneke P and Buchanan JJA agreeing); *Arthars v The Queen* (2013) 39 VR 613, 620–3 [24]–[32] (Redlich and Coghlan JJA and T Forrest AJA); *Arthur v The Queen* [2018] VSCA 58 [32]–[33] and the cases there cited (Priest and Hargrave JJA)

character.[25] The effect of that sentence will be made clear when I pronounce my orders.

64 I have given consideration to current sentencing practice for these offences in light of the decision of the High Court in *DPP v Dalgliesh (a Pseudonym)*.[26] As is so often the case, the circumstances of the offending conduct and the personal circumstances of the offenders are so varied that the assistance provided by sentencing statistics and the sentences imposed in other 'comparable' cases for offences of a similar character is necessarily limited. Nonetheless, I have tried to garner an understanding of sentencing patterns in this State for these offences.

65 Stand up Mr De Venuto

66 On Charge 1 (False Accounting) you will be convicted and sentenced to eighteen months' imprisonment.

67 On Charges 2 to 8 (inclusive) (Obtaining Property or Financial Advantage by Deception) you will be convicted and sentenced to an aggregate term of imprisonment of fifty-four months or 4½ years.

68 I order that six months of the sentence I have imposed on charge 1 be served cumulatively on the aggregate sentence imposed on charges 2 to 8 (inclusive). Making a total effective sentence of 5 years' imprisonment. I order that you serve a minimum term of 3 years' imprisonment before becoming eligible for parole.

69 I declare pursuant to s18 of the *Sentencing Act 1991* that the period you have served in custody in relation to these offences is 160 days (not including this day), which is to be reckoned as a period of imprisonment already served under the sentences I have just imposed and I direct that that declaration be entered in the records of the Court.

[25] *Sentencing Act 1991* (Vic) s 9.
[26] (2017) 91 ALJR 1063

70 Pursuant to section 6AAA of the *Sentencing Act 1991*, I state that but for your pleas of guilty I would have sentenced you to a total effective sentence of 7 years' imprisonment with a non-parole period of 5 years.